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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/789,509	02/27/2004	Wayne J. Gonnering	24.354	9088

28785 7590 06/28/2006

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EXAMINER

PEFFLEY, MICHAEL F

ART UNIT	PAPER NUMBER
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3739

DATE MAILED: 06/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/789,509	<b>Applicant(s)</b> GONNERING, WAYNE J.	
	<b>Examiner</b> Michael Peffley	<b>Art Unit</b> 3739	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 27 February 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-41 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 16-21 is/are allowed.
- 6) ☒ Claim(s) 1-10, 22-25 and 29-35 is/are rejected.
- 7) ☒ Claim(s) 11-15, 26-28 and 36-41 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>6/9/05</u> | 6) <input type="checkbox"/> Other: _____  |

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 3, 7-9 and 24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 3 and 24 are unclear in reciting the gas flow is conducted through the passageway and the RF energy is conducted through the conductor. In particular, the claims fail to recite a gas source or an energy source, so it is unclear how the gas and RF energy may be conducted in view of the lack of sources. It would appear the language should state that the device is "adapted to conduct" the gas flow and RF energy.

Claim 7 fails to provide antecedent basis for "the second connector".

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-10 and 22-25 are rejected under 35 U.S.C. 102(b) as being anticipated by Cosmescu (5,836,909).

Cosmescu provides a device formed by two mating pieces comprising a sealing surface (inner surface of piece 112) extending parallel with the axis of the device and a

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resilient radial sealing member (O-ring 142) carried on the other mating surface (114) at a location that contacts and seals against the sealing surface. There would inherently be a radial force between the two pieces where the O-ring is engaged. The two pieces define a gas passageway and a conductor (130) extends through the pieces to conduct RF energy to a distal electrode (132). The sealing surface is generally cylindrically shaped (Figure 5a) and concentric about the axis. It is noted that the Cosmescu patent does not specifically describe the delivery of a gas through the central lumen and rather discloses a suction being applied to the passage. Applicant's recitation of the gas is deemed to be an intended use and the Cosmescu device is inherently capable of delivering a gas to tissue through the passage. The instant application claims fail to positively recite a gas source connected to the device. With regard to claim 25, Cosmescu provides a retention mechanism (i.e. threads 146) the will restrain mating pieces (112 and 62) from rotation when fully engaged.

Claims 29-35 are rejected under 35 U.S.C. 102(b) as being anticipated by Treconsky et al (4,901,719).

Treconsky et al provide a gas coagulation device whereby mating pieces are connected together to deliver gas and RF energy to the tip member. A nose piece (116) is connected to a handle member with a sealing member (100) carried on one mating piece and being resiliently compressed against a sealing surface to establish a gas tight seal (see Abstract). It is noted the sealing member (100) has a surface that is parallel to the axis as well as a surface orthogonal to the axis. Gas and RF energy are

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conducted through the pieces and the pieces are connected by rotating them together with the threaded fastener.

***Allowable Subject Matter***

Claims 16-21 are allowed.

Claims 11-15, 26-28 and 36-41 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

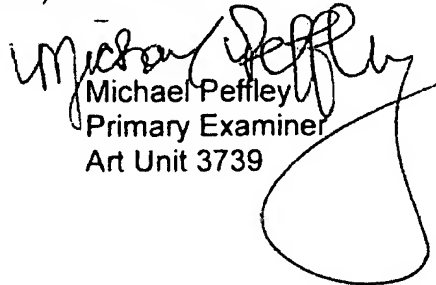
The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Cosmescu (6,149,648) discloses a gas coagulation device with matable pieces, and Beland et al (5,658,249) disclose a connection assembly for a suction device.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Peffley whose telephone number is (571) 272-4770. The examiner can normally be reached on Mon-Fri from 6am-3pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda Dvorak can be reached on (571) 272-4764. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Michael Peffley  
Primary Examiner  
Art Unit 3739

mp  
June 23, 2006